

U.S./Mexico Cross Border Demonstration Project

Background:

- Under NAFTA, the United States agreed to phase-out restrictions on cross-border passenger and cargo services beginning in 1994, with the lifting of restrictions on charter and tour bus operations. In 1995, however, the United States delayed the first stage of the NAFTA trucking provisions, which would have opened the four Border States to Mexican truckers. The final stage of NAFTA implementation would have allowed Mexican carriers to operate regular cross-border truck and bus services throughout the country. In February, 2001 a NAFTA dispute settlement panel ruled that the blanket exclusion of Mexican trucking companies from the United States violated U.S. NAFTA obligations.
- Following efforts by this Administration to bring the U.S. into compliance with the dispute panel's ruling, Congress adopted section 350 of the DOT Appropriations Act for fiscal year 2002, establishing a variety of safety conditions the Department must meet before allowing Mexican motor carrier operations in the United States. In March and May, 2002, the Department published a series of rules that fulfilled some of the congressionally imposed conditions. The other requirements were met shortly thereafter, and in November 2002, Secretary Mineta certified that allowing long-haul Mexican trucking would not pose an unacceptable safety risk.
- Although restrictions on Mexican motor carriers were then lifted, litigation delayed full implementation of the NAFTA land transportation access liberalization provisions. The 9th Circuit Court of Appeals ruled that the Department was required to complete an Environmental Impact Statement analyzing the environmental effects of allowing Mexican vehicles to operate freely in this country. The Supreme Court unanimously reversed the Court of Appeals in 2004, clearing the way for implementation of NAFTA.
- On February 23, 2007 Secretary Peters and her Mexican counterpart, Secretary Luis Téllez Kuenzler, announced that a demonstration project would be launched to permit up to 100 long-haul trucking companies from Mexico and up to 100 from the U.S. to begin cross-border operations in the other country in order to test processes and procedures put in place to assure safe operations.

STATUS:

- The U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act (Public Law 110-28), imposed a new set of preconditions for the start of the demonstration project, including compliance with section 350 of the 2002 Appropriations Act. In addition, the 2007 legislation required the DOT Office of Inspector General to analyze the Department's compliance with certain provisions of section 350 and to report to Congress

before the project could begin. The report was delivered to Congress on September 6, 2007, the Department responded, and the first Mexican-domiciled carrier was allowed to begin operations that day. Mexico also issued operating authority to the first U.S.-domiciled motor carrier to operate in Mexico on September 6, 2008

- The legality of the demonstration program has been challenged by a group that includes Public Citizen, the Sierra Club, and the Teamsters. A separate challenge was also filed by the Owner Operator Independent Drivers Association (OOIDA). Requests for preliminary injunctions by both groups were rejected by the Courts. Oral arguments were heard by the 9th Circuit Court of Appeals in San Francisco on February 12, 2008. A decision is pending.
- The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008 (P.L. 110-161) prohibits the U.S. Department of Transportation from using FY 2008 funds to “establish” a cross-border demonstration program. The Department interprets that language as allowing continuation of the current demonstration project because it was “established” in September, 2007, nearly four months before the Act was signed into law. DOT will continue the demonstration project in a manner that puts safety first, with participating Mexican carriers subject to all safety standards required by U.S. laws.
- FMCSA Administrator John Hill announced on August 4, 2008 that the cross-border demonstration project would be extended for two years. Similarly, Mexico’s Secretariat of Communication and Transport made the same announcement.
- On September 9, 2008, the U.S. House of Representatives voted on and approved H.R. 6630, a bill to terminate the cross-border demonstration project and, unless expressly authorized by Congress, prohibit the Secretary from granting authority to a motor carrier domiciled in Mexico to operate beyond United States municipalities and commercial zones on the United States-Mexico border after September 6, 2008. The U.S. Senate has not taken up this bill as of yet.
- Currently 27 Mexico-domiciled carriers and 10 U.S.-domiciled motor carriers are participating in the demonstration project. As of September 9, 2008, there have been 2,616 shipments by the U.S. carriers into Mexico and 1,415 shipments by Mexican carriers beyond the border commercial zones into the United States. There have been no reportable accidents involving these vehicles.